

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

COLEEN ROGOWSKI,

Plaintiff,

v.

16-CV-186
ORDER

NANCY A. BERRYHILL, acting
Commission of the Social Security
Administration,¹

Defendant.

On March 2, 2016, the plaintiff commenced this action. Docket Item 1. On December 16, 2016, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(B). Docket Item 11. On December 14, 2016, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings (labeled "Motion for Summary Judgment"), Docket Item 10; on March 31, 2017, the defendant responded and moved for judgment on the pleadings, Docket Item 16; and on May 19, 2017, the plaintiff replied, Docket Item 21. On February 8, 2018, Judge McCarthy issued a Report and Recommendation finding that the plaintiff's motion should be granted and that the defendant's motion should be denied. Docket Item 22. The parties did not object to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

¹ Since Nancy A. Berryhill is now the acting Commissioner of Social Security, she is substituted for Carolyn W. Colvin as the defendant in this action under Federal Rule of Civil Procedure 25(d). The Clerk of Court shall amend the caption.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's Report and Recommendation. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the plaintiff's motion and deny the defendant's motion.

For the reasons stated above and in the Report and Recommendation, the plaintiffs' motion for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 10, is GRANTED to the extent noted below; the defendant's motion for judgment on the pleadings, Docket Item 16, is DENIED; the decision of the Commissioner is VACATED; and the matter is REMANDED for further administrative proceedings consistent with Judge McCarthy's Report and Recommendation. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: March 1, 2018
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE